

REMARKS

The Office Action dated January 6, 2004 has been received and carefully noted. The amendments to the claims and the following remarks are submitted as a full and complete response thereto. By this Amendment, claims 1, 9, and 14-16 have been amended for editorial considerations and to further set forth the invention. Claims 20-21 were previously withdrawn as directed to a non-elected invention. No new matter has been added or amendments made which narrow the scope of any elements of any claims. Accordingly, Claims 1-19 are pending in this application and are respectfully submitted for consideration.

Claims 1-13 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Responsive to the rejection, Claims 1 and 9 are amended to clarify the subject matter. Applicant submits that support for these amendments is found in the specification at least at page 19, lines 11-22, at page 21, lines 9-14 and in Figure 1. Applicant submits that Claims 1-19 comply with the requirements of 35 U.S.C. § 112, first paragraph, and therefore request that the rejection be withdrawn.

Claims 9 and 14-18 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite and incomplete. Responsive to the rejection, Claims 9 and 14-16 are amended to clarify the subject matter. Applicant submits that Claims 17 and 18 do not contain the phrase "an open static-pressure-type tubular distributor." Thus, Applicant submits that the rejection with respect to these claims is moot. Applicant respectfully

submits that Claims 1-19 comply with the requirements of 35 U.S.C. § 112, second paragraph, and therefore request that the rejection be withdrawn.

Claims 1-3, 12 and 13 were rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Kaibel (U.S. Patent 5,914,012) or Lockett (U.S. Patent 5,339,648). Applicant notes that Claim 1 has been amended. To the extent that this rejection remains applicable to the currently pending claims, Applicant respectfully traverses the rejection and submits that the combination of cited prior art fails to teach or suggest each and every feature recited in the claims.

The Office Action overlooks the novelty and utility of the three distillation sections, and the bias of the partition that results in the cross-sectional area of the first chamber being different from that of the second chamber. These features are not taught or suggested in the prior art.

Kaibel does not disclose three distillation sections, each having an enriching section and an exhaust section as claimed in Claim 1. Nor does Kaibel disclose a partition that is biased such that the cross-sectional area of a first chamber differs from that of a second chamber.

In regards to Lockett, Lockett does not disclose three distillation sections, each having an enriching section and an exhaust section as claimed in Claim 1. Further, in Lockett, liquid is passed through lines 8, 9 and 10 between the first column 1 and the second column 2. Since Claim 1 of the present invention contains three distillation sections, it is not necessary to dispose lines for delivering liquid outside of the column body.

With regard to the rejection under §103 in the Office Action, it is also respectfully submitted that the Office Action has not yet set forth a *prima facie* case of obviousness. The PTO has the burden under §103 to establish a *prima facie* case of obviousness. In re Fine, 5 U.S.P.Q.2nd 1596, 1598 (Fed. Cir. 1988). Both the case law of the Federal Circuit and the PTO itself have made clear that where a modification must be made to the prior art to reject or invalidate a claim under §103, there must be a showing of proper motivation to do so. The mere fact that a prior art reference could arguably be modified to meet the claim is insufficient to establish obviousness. The PTO can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. Id. In order to establish obviousness, there must be a suggestion or motivation in the reference to do so. See also In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984) (prior art could not be turned upside down without motivation to do so); In re Rouffet, 149 F.3d 1350 (Fed. Cir. 1998); In re Dembiczak, 175 F.3d 994 (Fed. Cir. 1999); In re Lee, 277 F.3d 1338 (Fed. Cir. 2002).

The Office Action merely states that the claims are obvious over the cited references without providing explanation of how the references render the claims obvious, or supply a motivation to combine the references so as to render the claims obvious. A *prima facie* case of obviousness has therefore not been made.

In view of the above remarks, the Applicant respectfully submits that each of pending Claims 1-19 recite subject matter that is neither disclosed nor suggested in the

cited prior art. Applicant submits that this subject matter is more than sufficient to render the claimed invention unobvious to a person of ordinary skill in the art. Applicant therefore requests that each of the pending claims be found allowable, and this application be passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the Applicant's undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account No. 01-2300.

Respectfully submitted,



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